Volume 31 FEBRUARY, 1948 Number 5

Journal *of the* American Judicature Society

AMERICAN JUDICATURE SOCIETY
Ann Arbor, Michigan

THE AMERICAN JUDICATURE SOCIETY

To Promote the Efficient Administration of Justice

Founded in 1913 by Herbert Harley

Hutchins Hall

Ann Arbor, Michigan

THIS JOURNAL will be sent free on request to all persons interested in the Administration of Justice. Issued bi-monthly, in February, April, June, August, October and December. Back numbers, except a few rare issues, available at ten cents each.

JOURNAL OF THE AMERICAN JUDICATURE SOCIETY

Vol. 31, No. 5 GLENN R. WINTERS, Editor February, 1948

New Jersey Goes to the Head of the Class

NEXT SEPTEMBER 15, the people of New Jersey will exchange America's worst court system for America's best. In adopting a new constitution last November the voters moved their state, so far as the machinery of justice is concerned, from the foot to the head of the class.

The hundred-year-old order now on its way out had staunch supporters to the last, but there are few to deny that the accomplishments of the New Jersey bench and bar have been in spite of the court structure and not because of it. Topped by the sixteen-man Court of Errors and Appeals, including six "lay judges," and the separate Court of Chancery, it branched out into a conglomeration of miscellaneous courts of confusing names and overlapping jurisdictions, defying the chart-maker's skill.

The judicial organization under the new constitution, described and diagrammed in succeeding pages of this JOURNAL, attains most of the objectives for which the American Judicature Society and others have contended for the past thirty-five years. The three-level system of supreme court, superior court and county courts is set up just about as most of the numerous court unification plans chronicled in these pages through the years have envisioned it. The chief justice is the responsible head of it all, and a central administrative office will extend uniformity of practices and efficiency of operation to every judicial tribunal in the state. Responsibility for making the rules resides where it belongs, in the supreme court, which is already at work on this important task. It is not too much to hope that the model judicial organization may begin work next September with a model procedural code. Appointment of judges, one outstanding feature of the old system, is of course continued in the new.

It is only four years since the last proposal to overhaul the New Jersey constitution was rejected at the polls. The 1947 triumph was fashioned from the ashes of the 1943 defeat. Leaders of the bench and bar of Florida, Louisiana, Arkansas, Michigan, California, Ohio and other states where court organization projects are pending or constitutional revision is in prospect, should gain renewed faith that in spite of setbacks both past and future, there as well as in New Jersey, *it can be done!*

TABLE OF CONTENTS

THE INTRAMURAL LAW REVIEW of New York University is a good example of the type of thing suggested in an editorial on this page of the December JOURNAL. Published twice a year, chiefly for circulation within the school, under the supervision of Prof. Paul D. Kaufman, it is a seven by ten inch neatly lithoprinted booklet running from 60 to 90 pages, stapled with an attractive blue printed cover. Every student is required to write two law notes, the first limited to 1,000 words on an assigned subject as part of the course in legal research methods, and the second, from 2,000 to 5,000 words on a subject of his own choosing, to be completed the following semester in addition to the regular course of study. Some of the best of the latter go into the *Law Quarterly Review;* most of the rest make up the contents of the *Intramural Law Review.* The capacity of the *Intramural* is limited to about ten notes, but on the last page of the April, 1947, issue are listed authors and subjects of fifteen others with a note that because of space limitations they could not be printed although of high quality. The student who does not make either publication still has two samples of original legal research to show a prospective employer, which is more armament than most law graduates have for job hunting.

SPEAKING OF PUBLIC RELATIONS, no lawyer has done more to foster public understanding and good will toward his profession than the late Arthur Train, whose fictional character Ephraim Tutt has for many years to millions of magazine readers represented the bar as champion of the poor, the oppressed and the underdog, and whose legal exploits in their behalf show the law to be not so much a bag of tricks as, in Professor Bradway's words, "an instrument of social righteousness." If they have not already done so, the Hollywood movie-makers ought to take a look at Tutt's *Autobiography,* which, besides presenting the practice of law as lawyers would like to have the public see it, contains as much of the requisites for a box office hit as *The Egg and I,* or more. Another similar possibility is Bellamy Partridge's *Country Lawyer.* The country lawyer is good for as much glorification as the much-celebrated country doctor. Let's see that he gets it!

"BEHIND THE BLACK ROBES," Howard Whitman, writing in the February *Woman's Home Companion,* finds, along with the wise and learned judges, "a shocking—almost unbelievable—number of incompetents, idlers, tyrants, political hacks, knaves and bunglers." On a tour of the country to investigate reports of low-grade judicial service, Mr. Whitman declared he found on the bench men who regularly sleep in court during trials, alcoholics who have to be escorted to their homes by court attendants, mental incompetents in worse shape than some of those they commit to asylums, judicial tyrants to whom the power of the bench is an outlet for sadistic impulses, judges so old or ignorant of the law that they are dependent upon their secretaries or their colleagues to write their opinions, and others so indifferent that they think nothing of leaving the court room in the midst of a trial to smoke a cigarette.

Those of us who are interested in elevating the courts and the administration of justice in public esteem will not shrink from facing facts, no matter how unpleasant, that have a bearing on the right of the judiciary to the people's respect, but at the same time, to preserve our sense of proportion, we must bear in mind that the same sort of article could be written about clergymen, congressmen, or any other group of public servants. Any robe will look shabby when its seamy side is exposed to view.

A few months ago the same author wrote another article for the same

magazine entitled "Disease a la Carte," exposing unsanitary conditions in restaurant kitchens. This article, reprinted in the *Reader's Digest*, brought an avalanche of thousands of letters and resulted in innumerable local campaigns to clean up dirty restaurants. The impact of "Behind the Black Robes" is bound to be tremendous, whether or not it makes the *Reader's Digest*, as it is very apt to do, and the bench and bar in every part of the country may well reflect upon what should be said or done about it.

It is our suggestion that in every community in the land the public relations committee of the local bar assume responsibility for seeing that the publication of this article is seized upon as the occasion for addresses on the radio and before local audiences and for articles and editorials in the local press commenting on the local judiciary. These speeches and articles may be highly laudatory and yet give the occupants of the bench no more than their just due. At the same time, no better occasion can be found for pointing out the occupational hazards to which judges are subjected by the elective method of selection, and in the numerous states where judicial selection reform campaigns are in progress, bar committees can, without being in the least unfair to their judges, take advantage of the article to add momentum to their cause.

A.B.A. Announces $1,000 Essay Contest on State Administrative Law

A $1,000 essay contest on state administrative law has been announced by the Section of Administrative Law of the American Bar Association. The essays, limited to 4,000 words exclusive of footnotes, are in each case to consist of a review and analysis of the administrative law of a certain state, including legislation and judicial decisions. George Rossman, Chief Justice of the Supreme Court of Oregon and chairman of the Section of Administrative Law, in announcing the contest, has expressed the hope that at least one good essay will be submitted from each state. If essays of merit come from all states, it is thought that a publisher will print them in a volume devoted to state administrative law, and in that way many of the writers will receive additional recognition for their work.

The startling manner in which federal administrative agencies have multiplied in recent years has detracted attention from the fact that state administrative agencies also have increased materially in number and that some of the older agencies have won for themselves important expansions of their powers. The state agencies touch the lives of the people in a more intimate manner than do the federal agencies. It is a rare individual who goes through a day without being brought at some phase of his activities under the jurisdiction of a state administrative agency. The quality and price of the milk he drinks, for instance, is determined by a state administrative agency. His driver's license was issued to him by an administrative official who may suspend it without notice and without a hearing. If in the course of the day he enters a shop, store or office, he will observe tacked upon the wall the licenses under which the enterprise is conducted.

State administrative law is in need of the analysis and criticism which it will receive in the course of this contest. Most statutes are applicable to one agency only, and very few states have any laws applicable to all the agencies. As a result, the procedure before different agencies varies widely. Although the identical men who constitute the state industrial accident commission may also be the commissioners who comprise the unemployment compensation board, the procedure before the two agencies may be dissimilar. Most of the statutes which create state agencies, define their powers and delineate the manner in which they proceed were written without being preceded by an adequate study. The absence of preliminary study possibly accounts for the fact that procedure is not uniform and that the method for obtaining judicial review varies from agency to agency.

Some state bar associations, in order to stimulate greater local effort in the A.B.A. contest, have indicated an intention to supplement the prize money by an additional local award. Inquiries regarding the contest should be addressed to Omar C. Spencer, chairman of the contest committee, Yeon Building, Portland 4, Oregon. Manuscripts are to be submitted to the secretary of the Section, Miss Patricia H. Collins, Assistant Solicitor General's Office, Department of Justice, Washington 25, D. C. The closing date is November 1, 1948.

Have Faith in the United Nations

ORIE L. PHILLIPS

AT THIS ANNUAL MEETING of a Society dedicated to improving the administration of domestic justice under law, I trust you will not regard it inappropriate for me to discuss with you justice and ordered liberty under law among nations, attained through peaceful processes.

My hope is to increase your faith in the ultimate attainment of that goal through the United Nations.

I shall discuss what that Organization has accomplished; impediments which have prevented its effectiveness; and, finally, amendments to the Charter that may be needed to enable it to function more effectively. However, it seems to me those specific matters should be considered in the light of a background of certain general observations which I hope may clarify our thinking and aid us in reaching sound conclusions.

I am not unmindful that many persons have lost faith in the effectiveness of the United Nations and that it has been characterized as impotent. It seems to me that those who have lost faith in its effectiveness and those who regard it as impotent have been disappointed in its failure to accomplish more in a short time, have been blinded by impatience, and have failed to appraise, from a long-range viewpoint, its potentialities for accomplishment.

In an address at the Annual Meeting of the American Bar Association in 1944, I said:

"Our goal will not be quickly attained. It will take years, perhaps decades, of patient effort.

"In my thinking on these problems I have tried to be realistic and practical. I do not hope to prevent controversies and conflicts. Competition is a necessary stimulant to advancement and progress. Neither do I envision a world entirely free from disorder. I would not want to live in a civilization where men would not fight, if need be, for great principles and for their freedom and independence. We know that men will defend their lives, their families, and their homes, and we recognize the right of self-defense and even justifiable homicide. Nevertheless, we provide laws against assault and murder, and courts to adjudge and inflict penalties for wrongs, and means to enforce such judgments and penalties. And it does seem to me we can provide a system of law for nations, means to redress international wrongs and enforce international rights by peaceful processes, bring about ordered international freedom and justice under law, and in a substantial degree prevent aggression and armed conflict."

I have an abiding conviction that these objectives can and should be accomplished within the framework of the United Nations.

In attaining the objective of justice under the law among nations, we must of necessity interpose international control by a body of international law with means to enforce it.

In reaching that objective we must not move so fast as to provoke war. And, we must not move so slowly as to permit any aggressor to provoke war. Perhaps, we are compelled in the present world situation to take the risk of moving too rapidly in our effort to impose international control.

Again, while I would strengthen the United Nations, we must not hope that proper solution of all controversies can be compelled by force.

We have not reached that stage as to every character of domestic dispute. For example, in labor disputes we have not deemed it wise to compel submission to adjudication, even where processes of negotiation, conciliation, or arbitration have failed.

In the early stages of a world community lacking in cohesiveness and unity and made up of many nations varying widely in their traditions and ideologies, their religions, and their governmental systems, we can only hope, by an evolutionary process, to bring about compulsory adjudication of every character of international controversy and compliance with such adjudication by force.

Moreover, the Charter of the United Nations enjoins the parties to an international

---

Address before the annual meeting of the American Judicature Society, Cleveland, Ohio, September 24, 1947. Judge Phillips is Senior judge of the United States Circuit Court of Appeals for the Tenth Circuit, at Denver, Colorado.

dispute to first seek solution by negotiation, inquiry, mediation, conciliation, arbitration, resort to regional agencies or arrangements, or other peaceful means before invoking the aid of the agencies of the United Nations.

Furthermore, the moral suasion which will be engendered by a righteous opinion expressed by a great majority of the members of the General Assembly may be more compelling than military force.

I doubt that any nation, however powerful, will dare to continue a course of conduct condemned by the considered judgment of a great majority of the members of the General Assembly. No nation will lightly take the risk of being placed in the role of a world outcast. Whether I am sound in this conclusion can better be determined when the present session of the General Assembly has been concluded. Support for the view I have expressed may be found in the words of Secretary of State Marshall in his address to the American Association for the United Nations on September 15, where he said:

"We find it difficult to believe that members of the organization would deliberately seek to destroy its structure by persistence in acts of aggression or by obstruction of a nature to paralyze the principal organs of the organization,"

—and in the recent statement at Tarrytown, New York, of John Foster Dulles:

"It was never expected that the Security Council could act decisively when great powers were on opposite sides. It was expected that, even under these conditions, the U. N. could work for peace by requiring every nation, however powerful, to submit to a public judgment which none could veto—for it would be the conscience of the world"; and that every government now realizes "if it goes against a strong prevailing moral judgment, it may suffer grievous penalties."

The General Assembly may become a much more useful and effective organ of the United Nations than was at first envisioned.

October 24, 1947, will mark the second anniversary of the coming into force of the Charter of the United Nations. To a large extent, that period has been taken up with the work of organization and the development of technics and procedures. With the establishment of the Trusteeship Council last spring, the more important organizational work was completed.

No doubt, many of us have been keenly disappointed that more has not been accomplished in this relatively short period. However, two notable achievements stand out. At Rio de Janeiro, on September 2, 1947, representatives of the American republics agreed upon the Inter-American Treaty of Reciprocal Assistance, implementing the Act of Chapultepec. Nineteen signed and two more will sign this Treaty. Together they constitute more than one-third of the member states in the United Nations.

This Treaty contains clear and specific statement of its scope, its limitations and its purposes.

It "affirms as manifest truth that juridical organization is a necessary prerequisite of security and peace and is founded on justice and moral order. . . ."

It provides that the high contracting parties "undertake to submit every controversy which may arise between them to methods of peaceful settlement."

Of major importance is the fact that this Treaty contains a clear definition of elementary acts of aggression in these words:

"In addition to other acts which the organ of consultation may characterize as aggression, the following shall be considered as such:

"a. Unprovoked armed attack by a state against the territory, the people or the land, sea or air forces of another state;

"b. Invasion by the armed forces of a state or the territory of an American state through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision or arbitral award or, in the absence of frontiers thus demarcated, an invasion affecting a region which is under the effective jurisdiction of another state."

Articles 17 and 18 of the Treaty provide:

"The organ of consultation shall take its decisions by a vote of two-thirds of the signatory states which have ratified the treaty," and that

"In the case of a situation or dispute between American states the parties directly interested shall be excluded from the voting referred to in the two preceding articles."

Thus, what shall constitute an act of aggression is not left to ex post facto debate on political levels, as under the Charter, and action by the organ of consultation, to stop aggression or remove threats of aggression, is not subject to a minority veto, as is action by the Security Council under the Charter.

Under the Treaty, no signatory may veto or block action under the defined procedure for pacific settlement of controversies within the Americas, or prevent united action, in the exercise of the inherent right of united self-defense, against an aggression from any source, anywhere within the Continental American Zone defined in the Treaty. The sole limitation is that no nation "shall be required to use armed force without its consent."

This treaty outlaws war and aggression; it affords practical means for the settlement of disputes by juridical or other peaceful processes; and it provides for the common defense against attack. By it, the principles and purposes of the Charter of the United Nations are practically assured to the Western Hemisphere. All of this was accomplished in accordance with the Charter of the United Nations and it is a striking example and a concrete demonstration of what can be accomplished within the framework of that Charter by nations willing to submit themselves to a rule of law and to agree to afford mutual assistance and defense against defined aggression.

This Treaty should be an example and a hopeful augury to other members of the United Nations.

Another notable work commenced by the United Nations is in the field of international law. It is reflected in the comprehensive report and recommendation of the committee created by the General Assembly of the United Nations to formulate and submit definitive plans for the progressive development and the eventual statement of the rules and principles of international law in a form and content adapted to the postwar world. That report will be on the agenda of the General Assembly at its current session. The committee's recommendation is that the work be entrusted in the first instance, as our Association recommended in 1945, before the San Francisco Conference, and again to the State Department in May of 1947, to an international law commission of 15 specially qualified jurists and jurist consults, nominated by the member nations on a basis which will tend to assure that none will name only its own nationals; and elected by the General Assembly and the Security Council in the same manner as judges of the International Court of Justice are elected.

The completion of this work and its acceptance by the nations, in accordance with their own constitutional processes, will be a far-reaching forward step toward the accomplishment of justice and ordered liberty under law among the nations of the world.

Perhaps, the greatest impediment to constructive accomplishment by the Security Council has been the obstructionist attitude of the Union of Soviet Socialist Republics, hereinafter for brevity referred to as Soviet Russia, made effective by its unbridled use of the veto power, a power originally regarded as a necessary safeguard, but intended to be resorted to only in an extreme emergency.

There were indications at Yalta that Soviet Russia wished to restrict the positive functions of United Nations in maintaining peace. This was made more evident at San Francisco, on June 1, 1945, when the representatives of Soviet Russia demanded that the veto be applied at the very start of the Security Council procedure for settling disputes. Following instruction from Moscow, Andrei Gromyko demanded that the Security Council should be deprived of the right even to discuss and consider a complaint from an aggrieved or threatened state without the unanimous agreement of all of the five permanent members. This radical departure from what had been agreed to at Yalta was rejected by Secretary of State Stettinius. Moreover, the American delegation inserted into a joint interpretative statement, issued by the Big Five on June 8, a sentence to the effect that they were not expected to "use their veto power willfully to obstruct the operation of the Council."

It must be admitted that the British, French, and American representatives felt that, since the great powers were to bear the major responsibility for giving effect to any Security Council decision, more especially one involving military operation, they should be afforded the protection of the veto. However, the American conception of the veto was that it would be used only for major purposes and in extreme emergencies. It was the hope of the American delegation that the interpretative statement accepted by Soviet Russia, along with the other great powers, would lessen the likelihood of the veto being used to obtain tactical advantages or to block ordinary decisions concurred in by a majority of the Council.

That hope was a vain one. The veto has not been restricted to that interpretation. In the less than two years of the Security Council's existence, Soviet Russia has resorted to the veto 19 times. In addition, the veto has been used once by Soviet Russia and France together, and once by France alone. As a result, effective action by the Security Council in matters of grave importance has been obstructed.

I am convinced that the members of the United Nations, other than Soviet Russia and her satellites, are determined to have a workable peace organization. It is clear from the address of Secretary Marshall, on September 15, that our government hopes the United Nations can be made effective without major revision of the Charter or changes in the general character of the Organization.

However, it should be noted that Secretary Marshall, in his address before the General Assembly on last Wednesday, said:

"In the past the United States has been reluctant to encourage proposals for changes in the system of voting in the security council. Having accepted the charter provisions on this subject and having joined with other permanent members at San Francisco in a statement of general attitude toward the question of permanent member unanimity, we wished to permit full opportunity for practical testing. We were always fully aware that the successful operation of the rule of unanimity would require the exercise of restraint by the permanent members, and we so expressed ourselves at San Francisco.

"It is our hope that, despite our experience to date, such restraint will be practiced in the future by the permanent members. The abuse of the right of unanimity has prevented the security council from fulfilling its true functions. That has been especially true in cases arising under chapter VI and in the admission of new members.

"The government of the United States has come to the conclusion that the only practicable method for improving this situation is a liberalization of the voting procedure in the council.

"The United States would be willing to accept, by whatever means may be appropriate, the elimination of the unanimity requirement with respect to matters arising under chapter VI of the charter and such matters as application for membership."

Chapter VI has to do with decisions by the Security Council relative to pacific settlements of international disputes.

I am convinced that, unless the focusing of world attention on the disaster which must ultimately result from the obstructive tactics of Soviet Russia, the condemnation of such tactics by the law-abiding nations of the world, through their delegates in the General Assembly, the making clear that the law-abiding nations of the world propose to have an effective and workable peace organization, earnestly desirous that it be with Soviet Russia as a member, but without her if that be necessary, fail to bring a good faith change in the Russian attitude, then amendments that will curb the veto power, with Soviet Russia in if she will agree, but without her if she persists in her attitude and vetoes such amendments, are the only solution. I would keep open the way for repentance but make it abundantly clear that the day of judgment approacheth.

In the present state of world affairs, it seems to me to be of transcendent importance that the way be opened, through the formation and adoption of specific amendments of the Charter, expressly limiting the veto power, for member states to submit themselves to the rule of law, to accomplish the settlement of international disputes by peaceful processes, and to take effective action against aggression and threats of aggression, within the procedures of the United Nations.

I would authorize the Security Council to take its decisions by a two-thirds vote, subject to the sole limitation that no member nation should be required to use armed force without its consent.

In this critical period, what should be America's course?

We should faithfully live up to our obligations under the Charter. We should see to it that our public acts, whether carried out through the United Nations, or otherwise, are consistent with its Charter. We should make it abundantly clear that aggression against either the territorial integrity or political independence of any nation will be resisted by every force available to the United Nations. We should lead the way in insisting that the United Nations be made an effective and workable peace organization. We should exercise patience, but firmness. We should insist that the weak shall be free to choose their own way of life and their own political system. We should not seek to impose our economic or

political system on any people, except as the manifestation of the merits of those systems in America may impel their adoption. We should extend aid upon wise, reasonable, and proper conditions in the reconstruction of Western Europe, but not to an extent that will impoverish us or endanger our domestic economy. We must make our own economic and political systems work efficiently and competently. We must keep America strong and virile.

A strong and virile America, seeking neither political nor economic advantage and unselfishly leading the way in bringing to bear the force of the moral judgment of the law-abiding nations of the world, the force, as Mr. Dulles expresses it, of a world conscience, that aggression against territorial or political integrity of any nation shall not be tolerated; that international controversies must be settled by peaceful processes in accordance with law, justice, and right, and that the United Nations must be made an effective and workable peace organization, all made manifest through action of the General Assembly, is the world's best hope of peace.

Let us be steadfast in the faith.

Convention Committee Describes New Judicial System Adopted in New Jersey

The following description and discussion of the judiciary article of the new constitution adopted last November by the voters of New Jersey is taken from the report of the Constitutional Convention Committee on the Judiciary, of which the Honorable Frank H. Sommer was chairman. The full text of the judiciary article is printed on pages 142-144.

The testimony presented to the Committee was in large measure in agreement as to the essential characteristics of a modern judicial system. Three fundamental requirements were particularly stressed:

1. *Unification of courts.* By this means, the judicial system is simplified and the condition for economical and efficient administration established. It is the sole known technique for abolishing jurisdictional controversies which delay justice and waste the time and money of litigants and courts.

2. *Flexibility of the court system.* By assignment of judges according to ability, experience and need, and apportionment of judicial business among courts, divisions and parts, according to volume and type of cases, judicial resources can be fully utilized and litigation promptly decided.

3. *Control over administration, practice and procedure by rules of court.* Exclusive authority over administration, and primary responsibility for establishing rules of practice and procedure, secures business-like management of the courts as a whole and promotes simplified and more economical judicial procedures.

These were the basic principles which guided the Committee in framing the judicial article submitted to the Convention. Two other considerations, specially pertinent to the text and scope of constitutional provisions governing the judiciary, were also observed by the Committee:

1. Constitutions should deal with fundamentals, not details. The organic law should establish the framework of government, leaving the body and content to be supplied by legislation.

2. The function of a judicial article in a constitution is to create a system of courts, not to write or change the law which those courts will administer or enforce. The Committee was as concerned with avoiding revision of the substantive law, however urgent and necessary, as it was careful to preserve intact the right to trial by jury and the scope and extent of the judicial power.

OUTLINE OF THE COURT STRUCTURE

The new Judicial Article has four salient features:

A. The highest appellate court is the Su-

preme Court, comprised of seven justices who serve on that court exclusively and who hold office during good behavior upon reappointment after an initial term of seven years.

B. The existing courts of law and equity are replaced by a single state-wide court, called the Superior Court, having a Law Division, a Chancery Division and an Appellate Division, staffed by judges who acquire life tenure if reappointed after an initial term of seven years.

C. County courts are unified and retained, with their present criminal, probate and civil jurisdiction.

D. Administration, practice and procedure in all courts is to be governed by rules of the Supreme Court, subject to legislation in the case of practice and procedure.

Other noteworthy features of the new Judicial Article are:

E. The legislature retains the power to create additional inferior courts of limited jurisdiction.

F. Each judge of the Superior Court and the County Courts is to exercise all the powers of the court, and each court and division which hears a case is to grant both legal and equitable relief, so that all matters in controversy between the parties are fully decided.

G. The Chief Justice of the Supreme Court is to assign judges of the Superior Court to the various Divisions and Parts of that court, and to make reassignments as need appears, except that assignments to the Appellate Division are to be made for terms established by rules of the Supreme Court.

H. Justices and judges of all except municipal courts are to be appointed by the Governor and their names sent to the Senate for confirmation after seven days' public notice.

I. Except for incumbent judges, who will serve out their terms, justices and judges of the Supreme and Superior Courts must retire at 70, the legislature to prescribe pensions. All judicial officers are liable to impeachment, and Superior Court and County Court judges may be removed by the Supreme Court, as may be provided by law. Any justice of the Supreme Court or judge of the Superior or County Courts who has, according to certification by the Supreme Court, become incapacitated, may be retired by the Governor upon recommendation of a committee of inquiry comprised of three members appointed by the Governor.

J. Appeals in capital cases and in other cases designated by the legislature may be taken directly to the Supreme Court. Otherwise, appeals go to the Appellate Division of the Superior Court, from which a further appeal may be taken to the Supreme Court only where a constitutional question is involved or where there is a dissent in the Appellate Division. The Supreme Court is also given the power to certify a case in the Superior Court and cases in all other courts where provided by its rules, for a direct or a further appeal to the Supreme Court.

K. Both the Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be incident to a complete determination of the case on appeal.

L. In lieu of the prerogative writs, which now issue as a matter of discretion, relief is to be afforded by the Superior Court as of right, on terms and according to rules of the Supreme Court, except in criminal cases where such review remains discretionary.

M. The Chief Justice of the Supreme Court is to be the administrative head of all the courts, assisted by an Administrative Director appointed by him.

N. Clerks of the Supreme and Superior Courts are to be appointed by the Supreme Court, their term of office and compensation to be specified by the legislature.

DEFECTS OF EXISTING COURT STRUCTURE

The outstanding defects of the existing court structure, according to nearly all the witnesses, might be grouped in three categories.

The first, as to which opinion was unanimous, is the intolerable evil of jurisdictional controversies engendered by rival courts of law and equity dealing with the same subject matter. Even where the function of each tribunal is clearly understood and not in dispute, the dual court structure necessarily entails fractional and multiple litigation of the same controversy. The way to a solution is pointed by the almost unanimous example of the British Empire, the federal courts, and the judicial systems of most American states, which have long since discontinued independent courts of chancery.

Practically every one of the witnesses urged changes to correct the evil of divided jurisdiction in separate courts and incessant litigation of the same case. The only differences concerned the nature and extent of the cure.

A second and hardly less disturbing defect in our existing organization of courts is the multiple functions of appellate court judges and reiterated appeals of the same case. The aggregate of each judge's assignments makes it impossible to concentrate judicial energies upon a single important task and denies adequate opportunity for thoughtful consideration of appeals. Numerous appeals to the same judges, sitting in different courts, endlessly protract justice, multiply expense and present the undesirable example of judges taking turns from day to day in reviewing each other's decisions. There was absolute agreement that both conditions should be eradicated by limiting the number of appeals and by assigning judges to membership in only one appellate court at a time. Whatever differences there were among the witnesses concerned only the details of the improvements to be made.

The third shortcoming of the existing judicial organization, and perhaps the most costly, is the total lack of business-like organization, coordination and supervision of the courts as a whole. A corollary feature of this condition is the practice of resigning responsibility for the formulation of practice and procedure to intermittent revision by the legislature. Most witnesses agreed that there should be a centralized administration of all the courts, which should practice efficiency and economy according to business standards, and that the courts should resume and exercise primary responsibility over their own procedure. Such differences as developed among the witnesses were limited to the chain of command through which this supervision and control should be exercised, and reflected individual preferences as to the organization of the trial courts.

There was general approval of the methods selected by the Committee to improve the appellate structure and to inaugurate centralized administration over the business operation and procedure of the courts. A Supreme Court was proposed as the highest court of appeal, headed by a Chief Justice assisted by six associate, full-time justices. This court was given the power to make rules for administration, practice and procedure in all courts, subject to the overriding power of the legislature with respect to practice and procedure. The Chief Justice was made the responsible administrative head of all the courts, assisted by an Administrative Director of his own appointment. There was some difference of opinion as to whether the jurisdiction of this court should be selective and limited to important cases, including constitutional questions and capital offenses, or whether it should take appeals comprehensively, as does the present Court of Errors and Appeals. It was feared by some that a restricted jurisdiction might leave the justices idle, while others believed that a plenary calendar of appeals might overburden them. Since approximation of future judicial business is at best a prophecy, the Committee decided to err on the side of caution. By making the new Supreme Court's appellate jurisdiction selective, that court is assured of an adequate opportunity to hear, consider and decide every case which comes before it.

UNIFICATION OF COURTS

The decision to amalgamate the Court of Chancery with the law courts is another salient feature of the new judicial structure. [The Committee here discussed in extended detail the various objections that had been made to this step, noted the similarity between the situation in New Jersey and that in England prior to adoption of the Judicature Act of 1873, and quoted from British and other authorities as to the desirability of the change.]

The argument that a unified court entails forfeiture of the advantages of specialization is not confirmed by the experience of states which have merged their courts. The assertion confuses specialist judges with specialized courts. There is a fortuitous but not necessary connection between the two. Dean Roscoe Pound, formerly of Harvard Law School, who is perhaps the nation's outstanding authority on the organization of judicial systems, laid particular stress upon this error. He said that:

"A modern organization calls not for specialized courts but specialist judges, dealing with their special subjects when the work of the courts is such as to permit, but available for other work when the exigencies of the work of the courts require it. The idea must be, specialist judges in a unified court, sitting habitually in a special division, dealing with a

special type of case, but whenever the center of gravity shifts, liable to be assigned for a time somewhere else."

Later in the same talk, Dean Pound outlined the advantages of a unified court structure, centrally administered:

"It is easy to make branches of a single court cooperate towards the end of justice. It is not so easy to make independent courts work together smoothly, speedily and effectively. Cooperation enforced by appeals and prerogative writs is a different thing from the harmonious operation of a unified system under a responsible head."

It is just such a system that the new Judicial Article creates. The Superior Court which it establishes will have a Law Division and a Chancery Division, exercising original general jurisdiction in all causes throughout the state. Undoubtedly, judges will be assigned to each branch by the Chief Justice of the Supreme Court according to experience and qualifications. Reassignment of judges who perform meritorious service in a particular division is unlikely, except in cases of special need. However, each controversy will be decided fully in all its aspects by the judge before whom it comes, and no case will be shuttled between courts for piecemeal decision. The County Courts, of which there will be one in each county, will function on the same principle. Any civil case properly brought in those courts will be fully disposed of by allowing both legal and equitable remedies as the circumstances may require.

FLEXIBLE SYSTEM OF MINOR COURTS

Another important feature of the new Judicial Article concerns the County Courts. The need for a system of local, inferior courts is indisputable. There was general agreement that the existing County Courts should be retained, and this has been done in Section IV. Flexibility is a prime prerequisite of an efficient court structure. In harmony with this principle, the legislature is given the power to expand or to alter the powers, functions and jurisdiction of the County Courts and their judges, whenever the public good requires such action.

At present, a number of County Court judges devote only part time to their work. In view of the dignity and importance which attaches to judicial office, it is to be hoped that all judges will, before long, be full time officials, enjoying an adequate rate of compensation. There will be some counties in which the existing volume of civil, criminal and probate litigation will not fully occupy a judge's time. In these counties the difficulty might be remedied by merging other local courts with the county courts. In any case, the arrangement of courts and jurisdiction, if left to the future, need not follow a single pattern but can be closely adjusted to local conditions.

The new Article has a number of other important features. While all except municipal court judges are to be selected by the governor, the names will be announced to the public at least seven days before the senate receives the nominations for confirmation. The interval should provide an opportunity, not always afforded in the past, for an expression of public opinion.

LIFE TENURE AFTER ONE REAPPOINTMENT

All judges presently appointed to the Supreme Court and Superior Court will obtain tenure after one reappointment. By making judges secure in their positions, the possibility of distractions concerned with reappointment would be removed. On the other hand, judges of constitutional courts will be compelled to retire when they reach 70, and the legislature is directed to enact pension laws.

Another change corrects the difficulties created by the prerogative writs. These writs are now allowed by the present Supreme Court in its discretion. As a result, there is no clearly established right to appeal from the decisions of administrative agencies, which are generally reviewed by *certiorari*. There are similar difficulties in asserting claims for which mandamus and quo warranto are appropriate. In addition, and because of uncertainty as to the proper scope of each writ, cases sometimes reach the Court of Errors and Appeals before it is discovered that the case was correctly decided by means of the wrong writ, and must be retried.

The new provision abolishes the prerogative writs by name and makes the relief, which they now afford as a matter of discretion, available to litigants as a matter of right, except in criminal cases where the review remains discretionary. Since the writs, as distinct procedures, will disappear from the practice, litigants will no longer be penalized for a mistaken choice of the remedy.

Text of Judicial Article, New Jersey Constitution of 1947

SECTION I

1. The judicial power shall be vested in a Supreme Court, a Superior Court, County Courts and inferior courts of limited jurisdiction. The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law.

SECTION II

1. The Supreme Court shall consist of a Chief Justice and six Associate Justices. Five members of the court shall constitute a quorum. When necessary, the Chief Justice shall assign the judge or judges of the Superior Court senior in service, as provided by rules of the Supreme Court, to serve temporarily in the Supreme Court. In case the Chief Justice is absent or unable to serve, a presiding justice designated in accordance with rules of the Supreme Court shall serve temporarily in his stead.

2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided in this Constitution.

3. The Supreme Court shall makes rules governing the administration of all courts in the state, and, subject to law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

SECTION III

1. The Superior Court shall consist of such number of judges as may be authorized by law, but not less than twenty-four, each of whom shall exercise the powers of the court subject to rules of the Supreme Court.

2. The Superior Court shall have original general jurisdiction throughout the state in all causes.

3. The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division. Each division shall have such Parts, consist of such number of judges, and hear such causes, as may be provided by rules of the Supreme Court.

4. Subject to rules of the Supreme Court, the Law Division and the Chancery Division shall each exercise the powers and the functions of the other division when the ends of justice so require, and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined.

SECTION IV

1. There shall be a County Court in each county, which shall have all the jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions and such other jurisdiction consistent with this Constitution as may be conferred by law.

2. There shall be a judge of each County Court and such additional judges as shall be provided by law, and they shall be appointed in the same manner as heretofore provided for judges of the Court of Common Pleas.

3. Each judge of the County Court may exercise the jurisdiction of the County Court.

4. The jurisdiction, powers and functions of the County Courts and of the judges of the County Courts may be altered by law as the public good may require.

5. The County Courts, in civil causes including probate causes, within their jurisdiction, and subject to law, may grant legal and equitable relief so that all matters in controversy between the parties may be completely determined.

SECTION V

1. Appeals may be taken to the Supreme Court:

(a) In causes determined by an Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this state;

(b) In causes where there is a dissent in the Appellate Division of the Superior Court;

(c) In capital causes;

(d) On certification by the Supreme Court to the Superior Court and, where provided by rules of the Supreme Court, to the County Courts and the inferior courts; and

(e) In such causes as may be provided by law.

2. Appeals may be taken to the Appellate Division of the Superior Court from the Law and Chancery Divisions of the Superior Court, the County Courts and in such other causes as may be provided by law.

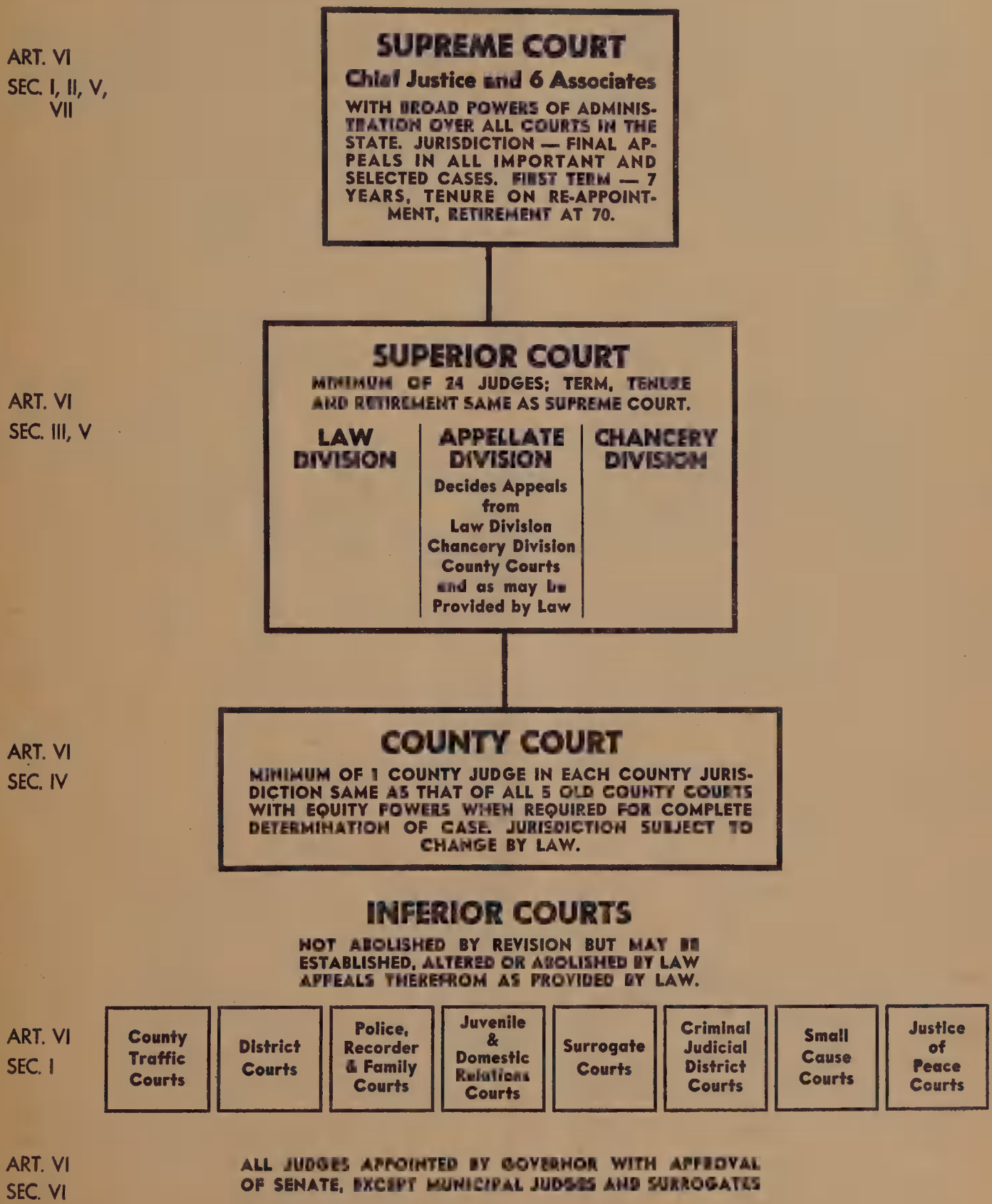
3. The Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review.

4. Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.

SECTION VI

1. The Governor shall nominate and appoint, with the advice and consent of the Senate, the

NEW JERSEY'S COURT SYSTEM UNDER NEW CONSTITUTION



PREPARED FOR THE NEW JERSEY COMMITTEE FOR CONSTITUTIONAL REVISION BY JOSEPH HARRISON

Chief Justice and Associate Justices of the Supreme Court, the judges of the Superior Court, the judges of the County Courts and the judges of the inferior courts with jurisdiction extending to more than one municipality. No nomination to such an office shall be sent to the Senate for confirmation until after seven days' public notice by the Governor.

2. The justices of the Supreme Court, the judges of the Superior Court and the judges of the County Courts shall each prior to his appointment have been admitted to the practice of law in this state for at least ten years.

3. The justices of the Supreme Court and the judges of the Superior Court shall hold their offices for initial terms of seven years and upon reappointment shall hold their offices during good behavior. Such justices and judges shall be retired upon attaining the age of seventy years. Provisions for the pensioning of the justices of the Supreme Court and the judges of the Superior Court shall be made by law.

4. The justices of the Supreme Court, the judges of the Superior Court and the judges of the County Courts shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The judges of the Superior Court and the judges of the County Courts shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Whenever the Supreme Court shall certify to the Governor that it appears that any justice of the Supreme Court, judge of the Superior Court or judge of the County Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the justice or judge from office, on pension as may be provided by law.

6. The justices of the Supreme Court and the judges of the Superior Court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment. They shall not, while in office, engage in the practice of law or other gainful pursuit.

7. The justices of the Supreme Court, the judges of the Superior Court and the judges of the County Courts shall hold no other office or position of profit under this state or the United States. Any such justice or judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

SECTION VII

1. The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the state. He shall appoint an Administrative Director to serve at his pleasure.

2. The Chief Justice of the Supreme Court shall assign judges of the Superior Court to the Divisions and Parts of the Superior Court and may from time to time transfer judges from one assignment to another as need appears. Assignments to the Appellate Division shall be for terms fixed by rules of the Supreme Court.

3. The clerk of the Supreme Court and the clerk of the Superior Court shall be appointed by the Supreme Court for such terms and at such compensation as shall be provided by law.

Much has been written about law administration, but little about the use of the halls of justice. Confusion exists as to the rules on smoking. In some courts smoking is permitted during recess, while in others no smoking is allowed at any time. It is an unpleasant and disappointing experience to many people, on their first introduction to court room atmosphere, to find the air as heavy with tobacco smoke as Joe's Bar, resulting in coughs, burning eyelids and general discomfiture. Surely a clean room not littered with burned matches and crunched cigarette stubs is a more fitting place for a court of justice. Nor does the reading of newspapers by counsel or the eating of foodstuffs by spectators during a trial add to the legal setting. Cuspidors have long since been discarded in homes and in the better offices, and sanitary if not aesthetic reasons should be sufficient to warrant their removal from the jury box. No judge will ever suffer criticism or political embarrassment for efforts to raise the dignity of the court room, for the people expect it.

—The Nebraska District Judge.

Texas Bar Seeks Improvement in Criminal Procedure

C. S. POTTS

Two recent cases decided by the Court of Criminal Appeals of Texas have shocked the people of the state and stirred the State Bar of Texas to undertake to secure some measure of reform of the Code of Criminal Procedure and in the practice under it. Accordingly, President H. Grady Chandler has appointed a strong committee, headed by former Attorney General William McCraw, and consisting of twenty-five lawyers, judges, prosecuting attorneys, and law teachers, to make a study of the code and report to the next annual meeting of the bar, to be held in July, 1948.

A brief statement of the facts and the holdings in these two cases may be of interest. The first case, Gragg v. State,[1] known as the "drowning-in-water case," was decided in 1945. The defendant, Chesley A. Gragg, was accused of drowning both his wife and her ten-year-old son by a former husband in a barrow pit in the Trinity River bottom within the City of Dallas. The indictment on which he was tried for drowning his wife charged " . . . that one Chesley Arthur Gragg on the 16th day of June, 1943, in the County and State aforesaid, did then and there unlawfully, voluntarily, and with malice aforethought, kill Flora Gragg, by then and there drowning the said Flora Gragg. . . ."

Defense counsel objected to the sufficiency of the indictment because it did not "allege whether the deceased was drowned in water, coffee, tea or what." The trial judge overruled the objection and the jury returned a verdict of guilty and assessed the death penalty. The Court of Criminal Appeals by a vote of two

The author is professor of law and dean emeritus of the law school of Southern Methodist University.

1. 148 Tex. Cr. R. 267, 186 S. W. 2d. 243 (1945)

to one upheld appellant's contention and reversed the cause and dismissed the prosecution, Judge Graves dissenting in an able opinion.

In the majority opinion Judge Beauchamp held that the statutes of Texas require that the indictment should set out the means by which the crime was committed, if known, and if not known to the grand jury, then the grand jury should so state in the indictment. This he thought the indictment failed to do.[2]

The Gragg case has been tried three times since the reversal. On the second trial, the jury failed to agree, the vote standing eleven for conviction, one for acquittal. On the third trial, a mistrial was declared because of an inadvertent remark before the jury to the effect that on a previous trial the defendant had been given the death penalty. The fourth trial, after a removal to Collin County, resulted in a verdict of life imprisonment. The judgment based on this verdict is now [January, 1948] pending on appeal.

The second case referred to above, Northern v. State,[3] "the kicking and stomping case," involved the killing of a woman of 69 by a young man of 18, whom she had befriended by giving him a ride in her automobile from a point in Oklahoma to Dallas. He had driven the car for her much of the way. When they reached Dallas at dusk, he drove her to a secluded spot in the river bottom and told her to get out, that he was going to take her car. When she resisted he kicked and stamped her into insensibility, and drove away in her car. She died five days later from the effects of the injuries inflicted by him. He was picked up by the police, in possession of the car.

The indictment against him charged that "Buster Northern on the 27th day of March, 1946, . . . did then and there unlawfully, voluntarily, and with malice aforethought, kill Fannie McHenry by then and there kicking and stomping the said Fannie McHenry . . ."

He was convicted by the jury and the death penalty was assessed against him. The sufficiency of the indictment was raised for the first time on appeal. The court reversed the case on the ground that the indictment did not affirmatively state that the "kicking and stomping" were done "with the feet." Judge Graves, in his vigorous dissent, pointed out that kicking and stomping could not be done with any other part of the body than the feet. He called attention to Webster's International Dictionary, which defines the word "kick" as "a blow with the foot or feet; a striking or thrust with the foot;" and the word "stomp," as a variation of the word "stamp," meaning "to strike or beat forcibly with the bottom of the foot, or by thrusting the foot downward." But the majority of the court refused to budge, holding that an indictment must not leave anything to inference or intendment.[4]

These cases, even if they had stood by themselves, might very well have created a demand for amending the Code of Criminal Procedure, but they did not stand alone. They were the culmination of a long series of cases that were reversed for trivial errors or omissions in the indictment.

Not only were the press and public shocked by these opinions but they were alarmed by what seemed to be a near break-down in law enforcement, especially in some of the larger cities. For example, in Dallas County the outgoing district attorney, at the end of 1946, dismissed more than 3,000 indictments that had never been tried, several hundred of them involving serious felony charges. So serious did the problem become that Governor Jester brought it to the attention of the legislature in a special message; but, as the session was then well advanced, nothing was done by the legislature to relieve the situation.

Now, one of the problems that the State Bar must decide is whether to recommend that the effort to bring about improvement in the Code of Criminal Procedure should be attempted by the legislature itself, or that it should be accomplished through the rule-making power of the Supreme Court. Precedent for applying to the legislature itself for relief is found in the fact that the Penal Code and the Code of Criminal Procedure were originally drafted by the legislature, in 1856, and that such changes as have been made in it since

2. The court here follows the opinions of Judge Davidson in two former Texas cases, Jackson v. State, 28 S. W. 815 (1894), (shooting "with a gun") and Huddleston v. State, 156 S. W. 1168 (1913).

3. 203 S. W. 2d. 206 (1947).

4. This case was tried on a new indictment containing the phrase "with his feet" in January, 1948, and the defendant was again convicted and given the death penalty.

that time have come through legislative action.

In favor of leaving rule making to the courts there is much to be said. The legislature is a large and unwieldy body, or rather two bodies, the lower house consisting of 150 members and the upper of 31. It meets in regular session only once in each two-year period, and then for sessions of only three or four months duration. Each biennial session is overwhelmed with a vast multitude of bills dealing with the economic, industrial, and social problems of a state almost continental in size, and with a population twice as large as that of all thirteen original states at the time our national government was organized. Many members are non-lawyers and know little or nothing of what the effect of their rules might be on court procedure.

Precedent, also, in England and this country, is strongly in favor of leaving rule making to the courts. Rule making has always been regarded as a judicial function in England, and in this country the Supreme Court of the United States and the high courts in many of the states have recently drafted new rules of procedure.

Section 25 of Article 5 of the Constitution of Texas reads as follows:

"*Supreme Court to Regulate Practice.* The Supreme Court shall have power to make and establish rules of procedure not inconsistent with the laws of the State for the government of said court and the other courts of this State to expedite the dispatch of business therein."

The authority conferred by this provision of the Constitution was recently exercised by the Supreme Court, acting through a drafting commission appointed by the Court, under the sanction of a statute passed in 1939. It is believed that a similar commission appointed by the Supreme Court in accordance with this constitutional mandate would do a better job, and at vastly less expense, than could be done through direct legislative action.

Latest Statistics on Judicial Salaries, Judicial Pensions and Judicial Councils

On pages 148 to 152 of this JOURNAL are tables presenting late statistical information on judicial salaries, judicial pensions and judicial councils in the states. These are part of a series of tables on the state judicial systems prepared for the 1948 volume of the *Book of the States*, published by the Council of State Governments, 1313 East Sixtieth Street, Chicago 37, Illinois, and are published here with that organization's permission. A few additions and corrections have been made in each of them since the *Book of the States* deadline, especially the table on judicial pensions, which was brought up to date in November by Mr. John M. Holmes, executive secretary of the Judicial Conference of Missouri. These tables supersede statistics on judicial salaries published in this JOURNAL in April, 1945, and on retirement pensions in December, 1943.

The post-war rise in prices has been reflected in a wide-spread movement for increase of judges' salaries during the past biennium. Judges of the courts of last resort of twenty-five of the states received raises of from $500 to $3,000 a year, and many lower court judges as well. Some of these are not yet in effect because of constitutional restrictions, and some are post-dated to January, 1949, and, in the case of Tennessee, to September 1, 1950. The nation's top judicial salary still goes to the presiding justices of the two metropolitan departments of the Appellate Division of the Supreme Court of New York, who get $30,500, $1,000 higher than two years ago. Next highest are their associate justices at $30,000. Other high ones are the judges of the New York Court of Appeals, $28,500 and $28,000, and Pennsylvania, $23,500 and $23,000. It is mercifully impossible to single out the lowest-paid judge, for there are part-time and fee-paid judges whose earnings may approach zero, but all Kentucky judges along with all other state officers are held by a constitutional restriction to a maximum of $5,000 a year. Relief of some kind for Kentucky judges is one of the objectives of the Kentucky State Bar Association in the 1948 legislative session.

Attention is directed to footnote 2 of the pension table, which was originally a mere notation that in those states a part of the cost of the pension plan is paid by deductions from the salaries of the judges. Recent inquiries as to the

amounts of these contributions have prompted the gathering of this information and its addition to the footnote. It will be seen that in 14 of the 31 states listed, such contributions are made, ranging from 2 per cent in Florida to 5 per cent in Georgia and Illinois.

Table III is, so far as we know, the first tabulation of state judicial councils to be published since the last *Handbook* of the National Conference of Judicial Councils appeared about six years ago. There have been numerous additions to the list since then, and this table shows only about a dozen blanks. Colorado is almost sure to have one within the next year, and it is not unlikely that before long the list will be complete.

In spite of endless checking and rechecking, it is useless to hope that this much statistical information can be assembled without error or omission. Corrections will be welcomed and published in a future issue of the JOURNAL.

TABLE I—JUDICIAL RETIREMENT PENSIONS

State	Minimum Age	Years Minimum Service	Amount of Pension	Judges to whom Applicable	Statutory References
Alabama	70	15	$4,000[1]	supreme	Alabama Code, 1940, Title 13, §31-33.
	70 (or 25 years' service, last 10 years continuous)	15	$3,000[1]	circuit	General Acts Alabama 1945, p. 478.
Arkansas	70	10	½ last salary	supreme	Acts of Arkansas 1941, p. 641.
	70 (or 24 years' continuous service)	20	½ last salary	chancery and circuit	Acts of Arkansas 1945, p. 431.
California	65	20	½ last salary[2]	appellate & trial	Deering's California General Laws, Vol. 2, Act 5849a, p. 2252.
	70	10			
Colorado	65	10	$3,000	supreme	Session Laws Colorado 1939, Chap. 96.
Connecticut	70	..	$7,000 or $8,000[3]	appellate & trial	Gen. Stat. Connecticut, §2248, 5866; Supp. 1935, §1674c.
Florida	65	20[4]	full salary	supreme	Florida Statutes, 1941, §25.12(4).
	60	12	⅔ last salary[2]	circuit	Florida Acts of 1939, Chap. 19000. F.S. 1941, ¶38-14-19.
Georgia	70	10	⅔ last salary	supreme, appellate	Georgia Ann. Code Supp. ¶24-2603 (a), ¶24-3605 (a), ¶24-4608.
	70	20	⅔ last salary[2]	superior	
Idaho	70	10	½ last salary[2]	appellate & trial	Session Laws Idaho 1947, Chap. 104, p. 210
Illinois	60	12	Up to ½ last salary[2]	appellate & trial	Illinois Rev. Stat. 1945, Chap. 37, Secs. 440, 441.
Kentucky	..	10	full salary[5]	court of appeals	Kentucky Revised Statutes, 1944, Sec. 21.150.
Louisiana	65	20	⅔ salary	appellate & trial	Art. 7, Sec. 8, Constitution of Louisiana (as amended in 1938).
	70	15	⅔ salary		
	80	20	full salary		
Maine	70	7	¾ salary	appellate & trial	Revised Stat. Maine 1944, Chap. 91, Sec. 5.
Maryland	60	..	Up to $6,000, depending on length of service	appellate & trial	Laws of Maryland, 1943, Chap. 966, Sec. 1, p. 1657.
Massachusetts .	70	10	¾ last salary	appellate & trial	Gen. Laws Massachusetts (Ter. Ed.) 1932, Sec. 61, as amended by Acts 1937, Chap. 409, p. 495.

State	Minimum Age	Years Minimum Service	Amount of Pension	Judges to whom Applicable	Statutory References
Minnesota	70 70	12 25	½ last salary[6] ½ last salary[6]	supreme district	Minnesota Statutes, 1945, Chap. 490, Sec. 490.01 to 490.12.
Nevada	65 65	20 16	⅔ last salary ⅓ last salary	appellate & trial	Bill No. 96 approved March 27, 1947, amending Nevada Comp. Laws, 1931-1941 Suppl. Secs. 4881.01-4881.05.
New Hampshire..	65	..	Up to ½ last salary depending on length of service[3]	all state employees	New Hampshire Laws 1945, Chap. 183.
New Jersey.....	70	14	½ last salary	appellate & trial	Laws of New Jersey, 1937, Chap. 179, p. 591.
New Mexico.....	64 60	10 18	$3,000[3]	appellate & trial	Laws of New Mexico, 1947, Chap. 132, p. 241.
New York	60 (55 optional with reduced benefits)	..	Up to ½ last salary depending on length of service[3]	all state employees	See State pamphlet "Laws Pertaining to the New York State Employees' Retirement System, 1946."
North Carolina..	65 (Continuous) 65	12 15	⅔ salary ⅔ salary	supreme appellate & trial	General Statutes of North Carolina, 1943, Chap. 7, Secs. 7-51, p. 457.
Ohio	60 55 any	5 30 36	individually computed[3]	all state employees (optional to judges)	General Code, Sec. 486-32 to 486-71, Page's 1947 Temp. Supp. pp. 19 ff.
Oregon	70	17	$3,000[3]	appellate & trial	Laws Oregon 1947, Chap. 504.
Pennsylvania ...	60	..	Up to ½ last salary depending on length of service[3]	all state employees	See pamphlet of State Employees' Retirement Board of Pennsylvania.
Rhode Island....	70 ..	15 25	$7,500 to $9,000	appellate & trial	General Laws of Rhode Island, 1938, Chap. 497, Sec. 2.
South Carolina...	.. 65 70 72	25 20 15 10	$3,000[7, 8]	appellate & trial	Acts South Carolina 1945, No. 136, p. 185.
Tennessee	65	24	½ salary[4]	appellate & trial	Public Acts of Tennessee, 1947, Chap. 64.
Vermont	65	..	Up to ½ last salary depending on length of service[3]	all state employees	See pamphlet on Vermont Employees' Retirement System.
Virginia	70 70	10 15	¾ last salary ¾ last salary	supreme court of appeals trial	Virginia Code, Sec. 3464 (as amended in 1944) and Sec. 5978a (as amended in 1946).
Washington ...	70 ..	10 18	½ last salary[3]	appellate & trial	Remington's Revised Statutes of Washington, Sec. 11054 —1 to 10.
Wyoming	70	24	$4,000	supreme	Compiled Statutes 1945, Sec. 1-114.
United States ..	70	10	full last salary	appellate & trial	U.S.C.A., Title 28, Sec. 375.

[1]Section 98 of the Alabama Constitution prohibits pensions to any state officer. The Alabama legislature has created the office of supernumerary judge who performs limited services, the amount shown under the pension column being salaries of such judges.

[2]Contributions from judges' salaries as follows: California 2½%, Florida circuit judges 2%, Georgia Superior Court judges 5%, Idaho 3%, Illinois 2½% for those entering plan prior to Nov. 30, 1947; 5% for those entering thereafter, to continue for not more than 18 years in either event; New Hampshire, New York, Ohio, Pennsylvania and Vermont, variable contributions separately computed for each individual; New Mexico 4%, Oregon 3%, South Carolina 4%, and Washington 2½%.

[3]Connecticut judges become state referees for life upon reaching the age of 70 and cases can be assigned to them. The salary is $7,000 unless the judge has had 20 years' service, in which case the salary is $8,000. (⅔ the salary of a judge of the superior court).

[4]Under a 1947 Act, a supreme court justice who has

TABLE II—SALARIES OF STATE JUDGES

State	Highest Court	Intermediate Appellate Court	Chancery Court	Circuit Court	District Court	Superior Court	Probate Court	County Court	Municipal Court	Other Courts
Alabama	9,500	9,000	.....	6,000 to 9,000	.....	.....	fees	.....	.....	.....
Arizona	8,500	.....	.....	.....	.....	7,000-7,500	.....	.....	.....	.....
Arkansas	9,000	.....	7,200	7,200	.....	.....	.....	.....	600-5,000	.....
California	16,000t	15,000	.....	.....	.....	7,000-15,000	.....	.....	8,000-12,500	.....
Colorado	6,500	.....	.....	.....	5,000	.....	.....	1,200-7,000	.....	.....
Connecticut	12,000r	.....	.....	.....	.....	12,000	.....	.....	.....	9,500x
Delaware	12,000r	.....	10,000a	.....	.....	.....	.....	.....	.....	4,000-5,000x
Florida	9,000	.....	.....	7,500-12,500	.....	.....	.....	.....	.....	.....
Georgia	8,000	8,000	.....	.....	.....	6,000-10,000	.....	.....	.....	.....
Illinois	18,000	10,000	.....	10,000	.....	.....	.....	2,400-10,000	1,000-6,500	4,000c
Indiana	10,000	10,000	.....	4,200-10,000	.....	4,200-10,000	.....	.....	.....	.....
Iowa	10,000d	.....	.....	.....	6,000	.....	.....	.....	3,500-4,200	.....
Kansas	8,000e	.....	.....	.....	4,000-5,000	.....	1,000-4,180	.....	.....	.....
Kentucky	5,000	.....	.....	3,000-5,000	.....	.....	.....	up to 5,000	.....	.....
Louisiana	14,000	10,000-13,000	.....	.....	6,000-10,000	.....	.....	.....	1,800-6,500	.....
Maine	10,000t	.....	.....	.....	.....	9,500	600-4,000	.....	.....	.....
Maryland	13,500t	.....	.....	9,500	.....	.....	$6-$18 per day	.....	.....	12,500 ft
Massachusetts	17,000ht	.....	.....	.....	1,000-6,000	14,500ht	3,550-13,000	.....	11,000jt	12,000i
Michigan	12,000	.....	.....	7,000-16,500	.....	.....	1,000-8,400	.....	.....	16,500k
Minnesota	11,000t	.....	.....	8,000-9,500	.....	.....	.....	.....	5,499-8,000	.....
Mississippi	7,500	.....	6,000	6,000	.....	.....	.....	3,600-4,200	.....	.....
Missouri	12,000	10,500	.....	6,000-9,000	.....	.....	.....	.....	.....	.....
Montana	7,500	.....	.....	.....	6,000l	.....	.....	.....	1,800	.....
Nebraska	8,500	.....	.....	.....	6,800	.....	.....	1,700-6,800	4,800	.....
Nevada	8,000	.....	.....	.....	6,000-7,200	.....	.....	.....	.....	.....
New Hamp	9,500	.....	.....	.....	.....	9,500	2,000-3,300	.....	600-3,800	.....
New Jersey	18,000r	.....	18,000s	16,000	.....	.....	.....	3,500-15,000	.....	.....
New York	28,000mr	30,000nr	.....	28,000o	.....	.....	3,500-21,000p	4,000-18,500	.....	13,500c
New Mexico	8,000	.....	.....	.....	5,250	.....	.....	.....	.....	.....
North Carolina	9,050	.....	.....	.....	.....	8,050	.....	.....	.....	.....
North Dakota	6,500	.....	.....	.....	5,000	.....	2,000-3,200	.....	.....	.....
Ohio	12,000y	12,000	.....	.....	.....	.....	.....	.....	.....	4,400-12,000x
Oklahoma	7,500	.....	.....	.....	4,000-7,200	.....	.....	1,500-4,800	.....	.....
Pennsylvania	23,000r	.....	.....	.....	.....	21,000r	.....	.....	.....	11,000-18,000x
Rhode Island	12,000t	.....	.....	.....	.....	9,500r	.....	.....	.....	.....
S. Carolina	7,500h	.....	.....	7,500h	.....	.....	.....	.....	.....	.....
South Dakota	7,200	.....	.....	6,300	.....	.....	.....	1,100-4,500	2,000-4,500	.....
Tennessee	7,500u	6,500u	5,000u	5,000u	.....	.....	.....	.....	.....	.....
Texas	10,000	8,000	.....	.....	6,000	.....	.....	.....	.....	.....
Utah	5,000	.....	.....	.....	4,000	.....	.....	.....	.....	.....
Vermont	7,000r	.....	.....	.....	.....	6,500r	.....	.....	.....	.....
Virginia	9,430v	.....	.....	6,144	.....	.....	.....	.....	6,144	.....
Washington	10,000w	.....	.....	.....	.....	8,000w	.....	.....	.....	.....
West Virginia	10,000	.....	.....	5,000-8,000	.....	.....	.....	.....	.....	.....
Wisconsin	10,000	.....	.....	9,000w	.....	.....	.....	1,500-10,000	.....	.....
Wyoming	7,000	.....	.....	.....	6,500	.....	.....	.....	.....	.....

served an aggregate of 20 years as a supreme court justice and a circuit judge may elect to retire on ⅔ salary.

[5]The Court of Appeals of Kentucky may appoint as a commissioner any judge of that court who has served continuously for at least 10 years. Such commissioners receive the same salary as a judge and may be called upon to assist the court.

[6]District court judges receive full salary and Supreme Court judges ¾ salary until the end of their terms, and thereafter half salary.

[7]A 1947 appropriation bill increases pensions to $4,500 but this is not a permanent law.

[8]Under Chap. 44, Public Acts of 1941, any judge who completes 24 years of service prior to Sept. 1, 1950, may retire at full salary.

NOTES TO TABLE II

a. Vice-chancellor. Chancellor, $12,500.
b. If elected prior to 1945, $15,000.
c. Court of Claims.
d. Beginning Jan. 1, 1949. Until then, $7,500.
e. Effective Jan. 1, 1949, if constitutional amendment is approved in 1948 election; otherwise at the end of present terms.
f. Supreme Bench of Baltimore City.
g. Orphans courts on per diem basis.
h. Plus expense allowance.
i. Land court. Plus expenses.
j. Boston Municipal Court.
k. Detroit Recorder's Court.
l. Effective Jan. 1, 1949. Until then, $4,800.
m. Including $3,000 expense allowance.
n. Appellate Division of Supreme Court, First and Second Departments. Other departments, $20,000 and $20,500.
o. Supreme Court (trial court of general jurisdiction), First and Second Departments. Elsewhere, $18,000 plus $1,000 expense allowance.
p. Surrogate.
q. ???
r. Chief justice $500 additional.
s. Vice-chancellors. Chancellor, $1,000 additional.
t. Chief justice $1,000 additional.
u. Until Sept. 1, 1950. Thereafter, by terms of a 1947 statute, Supreme court $12,000, chief justice $12,500, court of appeals $10,000, circuit and chancery $7,500.
v. Chief justice $424 additional.
w. Effective after expiration of present terms.
x. Court of Common Pleas.
y. Chief justice $600 additional.

Bar Integration Reports from Florida Minnesota and New Jersey

A poll of the Florida bar, conducted during the latter part of 1947 by the Committee on Integration of the Florida State Bar Association, resulted in a better than two to one vote in favor of integrating the bar of that state. Ballots were sent to all lawyers, including non-members of the state association, totalling about 3,000, and the returns, exceeding 50 per cent, were 1,131 for and 500 against. The Association will file a petition with the Supreme Court of Florida in the near future asking that the bar be integrated by rule of court.

A ballot of the Minnesota bar on the same question conducted by the Committee on Integration of the Minnesota State Bar Association resulted in a nearly even vote, the negative votes outnumbering the affirmative ones by just two ballots out of more than two thousand. The final score was 1,079 for integration and 1,081 against. Sixteen of the state's twenty districts voted favorably, but the negative votes of the other four districts, including the cities of St. Paul and Minneapolis, were sufficient to balance them with two votes to spare.

President Walter G. Winne's annual address to the New Jersey State Bar Association at its annual meeting in Atlantic City last June reopened the question of integration of the bar of that state, and the matter has been under active consideration and discussion since that time. A resolution approving integration of the bar by rule of court and authorizing an application therefor to the court was carried over from the annual meeting to the mid-winter meeting in Newark in December. At that meeting a substitute resolution was adopted calling for appointment of a committee to survey the positions of the county bar associations on the question and report back to the state association. The first county association to endorse the proposal was the Bergen County Bar Association, which adopted a resolution approving the proposals outlined in President Winne's address at its annual meeting in December.

TABLE III—JUDICIAL COUNCILS

State	Year Founded	Authorized by[1]	Membership: Judges	Membership: Lawyers	Membership: Laymen	Meetings Per Year	Functions: Compiles Judicial Statistics	Functions: General Judicial Research
Alabama	1945	B. R.	3	5	1	▪	*	*
Arizona	1936	B. R.	5	5	4	1	..	*
Arkansas	1941	Vol.	All	..	..	1	..	..
California	1926	Const.	11	..	..	3-4	*	*
Colorado	....	.....	..	..	..	..	..	..
Connecticut	1928	Stat.	4	3	1	..	*	*
Delaware	....	.....	..	..	..	..	..	..
Florida	....	.....	..	..	..	..	..	..
Georgia	1945	Stat.	5	5	5	▪	*	*
Idaho	1929	B. R.	..	11	..	6	..	..
Illinois[2]	1929	Stat.	3	2	..	▪	..	*
Indiana	1935	Stat.	4	3	2	2	*	*
Iowa	1936	S. C.	..	13	..	Inactive	..	..
Kansas	1927	Stat.	3	4	2	4	*	*
Kentucky	1929	Stat.	52	..	..	1	*	*
Louisiana[3]	....	.....	..	..	..	..	..	..
Maine	1935	Stat.	..	..	..	Inactive	..	..
Maryland	....	(Judicial conference established in 1946)				..	..	..
Massachusetts	1924	Stat.	6	4	..	12	*	*
Michigan	1929	Stat.	3	5	2	2	*	*
Minnesota	1937	Stat.	5	6	1	[6]	*	*
Mississippi	....	(Judicial conference established in 1945)				..	..	..
Missouri	1941	▪	▪	..	..	3-4	..	*
Montana	....	.....	..	..	..	..	..	..
Nebraska	1939	S. C.	4	6	3	4	*	*
Nevada	....	.....	..	..	..	..	..	..
New Hampshire	1945	Stat.	2	5	3	2	*	*
New Jersey	1930	Stat.	5	7	2	[6]	*	*
New Mexico	1933	Stat.	..	9	..	[6]	..	*
New York	1934	Stat.	7	4	9	[6]	*	*
North Carolina	....	.....	..	..	..	..	..	..
North Dakota	1927	Stat.	21	6	..	▪	*	*
Ohio	1924	Stat.	5	5	3	6	*	*
Oklahoma	1943	S. C.	4	4	2	1	*	▪
Oregon	....	.....	..	..	..	..	..	..
Pennsylvania[5]	....	.....	..	..	..	..	..	..
Rhode Island	1939	Stat.	..	6	..	[6]	*	*
South Carolina	....	.....	..	..	..	..	..	..
South Dakota	1933	B. R.	5	5	2	2	*	*
Tennessee	1943	Stat.	..	(14 total)		..	*	*
Texas	1929	Stat.	5	7	4	1-3	*	*
Utah	1931	B. R.	3	8	..	1	..	*
Vermont	1945	Stat.	1	4	..	..	..	..
Virginia	1930	Stat.	5	4	..	..	..	..
Washington	1926	Stat.	4	3	3	4	*	*
West Virginia	1934	Stat.	4	5	..	4	..	*
Wisconsin[5]	....	.....	..	..	..	..	..	..
Wyoming	....	.....	..	..	..	..	..	..

1. Explanation of symbols:
   B.R. Resolution of state bar.
   Vol. Voluntary organization.
   Const. Constitution.
   Stat. Statute.
   S.C. Established by rule of supreme court.
2. Cook County.
3. No judicial council, but Louisiana State Law Institute performs similar functions.
4. Executive committee of Missouri Judicial Conference.
5. No judicial council, but similar functions performed by procedural rules committee.
6. Irregular or unreported.

Indiana Lawyers, Answering Questionnaire, Favor Many Procedural Reforms

Noting a widespread concern among Indiana lawyers over the drift of legal business from lawyers and courts to boards and agencies where it is disposed of by persons without legal training, President Charles A. Lowe of the Indiana State Bar Association last year devoted his annual address (23 Indiana Law Journal 1, Oct., 1947) to reporting the results of a questionnaire conducted by himself among several hundred selected Indiana lawyers as to their thinking regarding the administration tion of justice in the courts of that state. Their reaction ("almost an explosion") ranged from many excellent commendations and suggestions to the one who proposed that next time he solicit his correspondents' opinion of "that damn nuisance known as the professional reformer."

Concerning pre-trial procedure (Rules, Indiana Supreme Court, 1946 Revision, Rule 1-4) 72 per cent were generally favorable toward it, although less than half said they had used it to advantage themselves. Eighty-two per cent opposed making it mandatory, but 66 per cent were willing to make it so upon demand of one party. Several commented favorably upon the method used by Federal Judge Robert C. Baltzell of Indianapolis, who has each side prepare a written stipulation of the facts it is willing to admit, usually resulting in a substantial reduction of the facts necessary to be proved in the trial, and Mr. Lowe commended this as a means of saving time and simplifying trials.

Instructions to juries, the lawyers agreed, are "too many, too long and too technical." Eighty-nine per cent voted against oral instructions, and many favored the use of standardized instructions, which Mr. Lowe commended as worth a try. While only a small minority favored permitting the judge to comment on the value of evidence or the credibility of witnesses, many thought judges too timid in informing the jury what facts are not in dispute. Many of the correspondents expressed a desire for administrative power in the supreme court to assign judges from other parts of the state to sit in change of venue cases and to assist in cleaning up dockets.

A substantial majority wanted to see summary judgments added to Indiana court procedure, whereby, if the plaintiff files an affidavit that no real defense exists the dependant must satisfy the court that there is a genuine controversy or submit to having judgment entered against him at once. Suggestions for improvement of appellate procedure follow closely the pattern of the new federal rules, with special emphasis on elimination of lengthy recitals of evidence in the briefs and substitution therefor of transcripts of only such excerpts of it as are pertinent to the appeal.

Mr. Lowe does not consider himself a "reformer," either with or without the adjective, and thinks Indiana courts are doing a creditable job, but thinks possible improvements are worth patient study and consideration. His recommendations, based on the questionnaire, are of interest not only to Indiana lawyers and legislators but to leaders of the bench and bar of other states, who, if they made the investigation, would doubtless find similar latent sentiment in support of a substantial program of improvement.

Private Litigation at Public Expense

In its Twenty-Third Report, issued last month, the Judicial Council of Massachusetts gives thoughtful consideration to the high cost to the people of the state of maintaining its judicial system and some possibilities for reducing it. Without attempting an up-to-date calculation, the Council refers to a study made in 1926 estimating the net cost to the public of the state's judicial system as upwards of $6,000,000, and ventures the reasonable guess that today it is considerably more in view of the rising costs in all directions during the past twenty years. More specifically, again using comparatively ancient figures, in 1929, 37,032 actions of all sorts were entered in the Superior Court, the cost of which to the public was esti-

mated at $1,600,000. This amount was paid by all of the people to finance the litigation of the .009 per cent who were involved in those cases.

Such an expenditure has been justified on the ground, as stated by a 1944 bar committee studying the problem, that "it was the duty of the government to provide courts just as much as it was the duty of the government to provide police, fire and health protection." This committee contended that the exaction of a separate special fee from parties who ask for a jury trial is not a sound principle for the administration of justice.

Rejecting the bar committee's reasoning, the Council thought it could find a difference between the two types of obligation, and referred to a rule of court providing that after a certain length of time inactive cases should be dismissed, under which over 14,000 cases were dismissed the first time it was applied.

"Judges, lawyers and jurors know only too well," says a comment quoted by the Council, "that many cases are entered involving alleged disputes which well could be settled by the village barber, equipped with his usual knowledge of human nature and endowed with a fair sense of justice. . . . From the statistics, it appears that something over 80 per cent of the cases disposed of, not including those dismissed, are settled by the parties without full trial. Perhaps, if it cost more to enter cases and also to defend them when entered, the parties would not be so quick to resort to the courts in view of this percentage. Perhaps the certain knowledge of added costs would be an effective argument for the plaintiff to exhaust all reasonable means to effect a settlement before bringing suit and for the defendant, at least to talk settlement.

"Whatever the results might be along these lines, the fact remains that the commonwealth and counties would be relieved in part of a heavy burden which they now bear. Possibly one reason why these burdens do not seem impressive is that they are distributed annually among the commonwealth and the several counties. If, for the purposes of illustration, we had no counties and the entire court burden was borne by the commonwealth, and, using the figure of $6,000,000, the legislature was called upon to appropriate this amount each year, we might have a situation which would call for profound debate. But when this vast total has to be garnered from a great number of items, contained in many appropriations, its staggering greatness is hardly appreciated. It may seem like pulling teeth from 32 persons, but in reality it is extracting a full set of 32 from one, the people of the entire commonwealth. If we confine ourselves again to the civil business of the Superior Court, the figure is reduced to say, $1,600,000. Before the Great War, this would have been thought to be a sizeable sum. In any event, it is still a lot of money and represents what the people are taxed to enable .009 per cent of the population to go to court."

Figures presented by Judge Charles P. Howard of the Superior Court of Middlesex County for 1945 and 1946 show graphically how these costs line up under present-day conditions. Expenditures incidental to the handling of civil business in that county for stenographers, juries, court officers, constables, meals for juries and miscellaneous items totaled $157,378.97 in 1945 and $176,145.96 in 1946. Receipts from entry fees in those years were $10,608.00 and $13,806.00, respectively, leaving a balance of expense to the county of $146,770.97 and $162,339.96. To complete the picture, there must be added $162,394.47 for 1945 and $174,417.79 for 1946 for expenses incident to the handling of criminal cases, and an estimated $20,000 each year for heat, light, janitor and other services, making the approximate total public expense of the court in 1945 $329,105.44 and in 1946, $356,757.75. Beside these huge sums, the $10,000 and $13,000 paid by the litigants seem paltry indeed.

The Council concludes this part of its report with recommendations for substantial increases in fees, and, pointing out the large cost of a 12-man jury, proposes that an additional incentive to the use of smaller juries be provided by making the jury fee larger for the one than for the other.

Survey of Metropolitan Courts Begun

A survey of metropolitan courts, comprising a legal study of court machinery in states containing large metropolitan centers together with a more particularized study of court organization and operation within the metropolitan areas themselves, has been undertaken by the research staff of the University of Michigan law school in behalf of the Metropolitan Court Committee of the Section of Judicial Administration of the American Bar Association. As a part of the metropolitan court study, a detailed factual survey of courts in the Detroit area will be made, to disclose conflict and waste of jurisdiction, extent of cooperation between courts, the size and cost (to the taxpayer) of the case load, use of pre-trial techniques, and other matters material to the prob-

lems peculiar in scope or extent to metropolitan courts.

Maxine Virtue, a graduate of the Yale law school and a member of the Kansas and Michigan bars, will conduct the study under the supervision of Professor Edson R. Sunderland. Presiding Judge Ira W. Jayne of the Wayne County Circuit Court is chairman of the American Bar Association committee. The preliminary study is to be completed for the September meeting of the American Bar Association.

Promotion of "The Paradine Case" to Benefit Legal Aid Work

The legal aid movement in this country is to be the beneficiary of a unique promotional scheme devised by the producers of the new motion picture "The Paradine Case." The film, which represents a murder trial in the historic London criminal court, Old Bailey, with meticulous accuracy in the portrayal of the court room and English law and procedure, will be presented in a special premiere performance in various cities throughout the country under the sponsorship of the local bar association, at a price to be set by the local sponsors, all net proceeds to be paid over to the National Association of Legal Aid Organizations for the promotion of legal aid work in the United States. Some sixty such performances in as many major cities already have been scheduled to be held during February, March and April. Information regarding them, or regarding the scheduling of additional ones elsewhere, may be secured from the Association, 25 Exchange St., Rochester, N. Y., or from Arthur E. Schoepfer, Executive Director, American Bar Association Committee on Legal Aid Work, 16A Ashburton Place, Boston 8, Mass.

And Not Only Missouri

A news story yesterday reported that many lawyers stayed away from the criminal division of circuit court during the opening court session because they didn't want to be appointed to represent criminal defendants who are without funds to retain counsel.

It's hardly fair to blame these attorneys, either. Many of them through the years repeatedly have been called on to give their legal services gratis to men who have been accused of breaking the law. It has kept them in some instances from accepting employment that would carry remuneration. It has been a nuisance for some attorneys who just don't care to practice criminal law.

On the other hand, the penniless defendants are entitled to counsel. Maybe only one out of twenty actually is not guilty, but everyone regardless is entitled to as full a legal representation as the man who can pay a big attorney fee.

The solution is simple: A state law that would provide for the payment of fees by the state to those attorneys named to represent indigents. Other states have such laws, with the amount of the fee depending on the seriousness of the charge and the work entailed in preparing for trial and trying the case. In all fairness to the attorneys and those accused, Missouri should have such a law.—*St. Joseph, Mo., Press,* as quoted in the *Missouri Bar Journal.*

Missouri Bar Holds Mid-Year Work Meeting for Committees

Most lawyers have at one time or another served on a bar committee that operated on a schedule comparable to the following:

September—Annual meeting of the association.

October—Appointment of committee members.

November—Letter from chairman to members outlining program and soliciting cooperation. Return letters approving program and promising cooperation.

May—Letter from association secretary to committee chairman reminding him that committee report is due in July.

June—Letter from chairman to members containing alibis for the year's inactivity and begging for help in getting together some kind of a report before the deadline. Letters from members to chairman offering no help and approving in advance anything he writes for that purpose.

July—Report filed with secretary one week late.

This, of course, is hardly a fair representation of the hundreds or even thousands of bar committees which year after year do put in hard and constructive work on their assignments, the sum total of which may be said to be the accomplishments of the organized bar for the

year. There is, however, a tendency in that direction, not only in bar committees but wherever busy people undertake volunteer work *pro bono publico*, and wherever the result has been otherwise it has been because some personality or some method of procedure has prevailed over it.

To the Honorable Charles M. Blackmar, president of the Missouri Bar, we are indebted for a description of as good a device for stimulating committee activity as has yet been developed —the mid-winter meeting of committees.

This meeting was held this year on Friday and Saturday, January 30 and 31, at Jefferson City. All but two members of the Board of Governors were there, all chairmen of important committees, and approximately four hundred committee members, including appellate, circuit and probate judges and magistrates, and also a substantial number of young lawyers. Some years ago the Missouri Bar abolished its junior section and established the policy of working a substantial number of young men into all committee and bar activities, and those in attendance at the meeting were greatly impressed with the keen interest taken in the committee work by the younger members of the organization.

The meeting differed radically from most bar get-togethers in that there was a minimum of formalities and prelminaries. Quarters were assigned to each committee, and as early in the day as possible they all plunged into their work. Quite a number of them remained in session until after midnight, and others continued their work until late in the afternoon of Saturday the 31st. Most of the committees have prepared or will prepare interim or progress reports, or minutes of the meeting, and the best of these will be circulated among members of other committees as well as their own.

A mid-season bar meeting is not peculiar to Missouri, as the state associations of Ohio, New Jersey, Pennsylvania and other states have long held two general meetings a year. Most of these, however, include more or less of the usual convention routine of speeches, dinners and the like. A two-day workshop given over to the committees themselves is a new wrinkle in bar association activities, and goes a long way toward explaining why this four-year-old integrated bar already has so many accomplishments to its credit.

The Bar Association and the Bar Foundation

Latest addition to the list of state bar foundations is the Michigan State Bar Foundation, organized in Ann Arbor recently with Glenn C. Gillespie, Pontiac, as its president.

The Iowa State Bar Foundation reported assets of $27,146.56 on June 30, 1947, $21,090.64 of which was raised during the last fiscal year. A campaign is now in progress to reach a goal of $50,000.

The purposes of the state bar foundation are explained in the Iowa State Bar Association's *News Bulletin:*

"The Foundation is organized for the purpose of using funds to implement the activities of the Iowa State Bar Association along those lines which are impossible at the present time due to the limited budget under which the Association operates. During the past ten years the Iowa State Bar Association has become increasingly effective, and now comprises approximately ninety per cent of the lawyers of Iowa. The bar of Iowa has been recognized as having the finest organization of its kind and size in the United States [it received the American Bar Association award in 1947]. This has all been accomplished despite the fact that the Association's income has never been more than enough to pay current and ordinary expenses. The success of the Foundation will mean that there will be funds on hand to devote to activities in which the Iowa State Bar Association should play a more important part than it is now playing.

"Among these activities are the increasing of the effectiveness of the legal institute program, systematic efforts to restrain further encroachments of administrative agencies in fields which properly belong to the courts, juvenile delinquency, and many others. On every hand can be seen the organization and operation of various groups taking more and more active part in shaping the community. Through the Iowa State Bar Foundation going hand in hand with the Iowa State Bar Association, the lawyers of Iowa can best play their traditional role of leadership. The Iowa State Bar Foundation is administered by lawyers and seeks contributions from their ranks, and at the same time will be of great benefit to all of the citizens of Iowa."

Americans have a reputation of being good givers to causes for which voluntary donations are requested. A reasonable increase in bar dues would be no hardship to the vast majority of the lawyers of this country, but even the small hardship it might bring to the lower fringe of the bar could be avoided by leaving

dues at a modest level and establishing a foundation from the contributions of those able and willing to give to it. Furthermore, dues generally are the same for all members of the bar, while establishment of a foundation makes it possible to reach the wealthier members for larger amounts. Surely such an organization would be a valuable adjunct to any state or city bar association.

Paragraphs

A 25-page handbook for jurors has been drafted by a committee of the Columbus (Ohio) Bar Association headed by Justin L. Sillman, and published with the approval and financial assistance of the judges of the Common Pleas Court, for distribution to jurors in that court.

A Special Courts Committee, headed by Co-chairman Walter Bender and Chris Steinmetz, Jr., has been appointed by President Brooke Tibbs of the Milwaukee Bar Association to make detailed study, recommendations and report regarding unification of courts, simplification of procedure and selection of judges in Milwaukee County.

Awards of merit to local and district bar associations for outstanding work in behalf of the profession and the public will be presented this year by the State Bar of Texas, William J. Park, secretary, has announced.

The Reader's Viewpoint

The Last Word at Last

To the Editor:

In your October issue, at page 92, you have a "correction" signed by J. H. McKnight, with regard to the residence necessary in Utah for acquiring jurisdiction for divorce. Mr. McKnight suggests that the time of residence is not six months but one year within the state and three months within the county. We wish to add a further correction: The 1943 legislature passed the last amendment, which requires only three months' residence in the county and state. See Section 40-3-1, Compiled Laws of Utah, 1943, as amended by Chapter 46 of the Session Laws of 1943.

PAUL B. CANNON.

Salt Lake City Utah.

In Defense of the Unanimous Verdict in Criminal Cases

To the Editor:

The October JOURNAL came this morning, and, as usual, I read it immediately. This issue furnished me much interest because of the article "Why Veto Jury Verdicts?" by Judge Haralson. I am forced to the conclusion that Judge Haralson appears to have formed a conclusion and then written his article to justify that conclusion. He has done a great amount of research, and I commend him upon the structure of his article. However, I feel he has completely missed the legalistic reasoning which supports the rule of unanimity in criminal cases. The Judge has cleverly chosen certain facts and placed them together to form a premise for his conclusion, but I do not concede some of them to be facts, and without those the premise fails.

The question of whether punishment is cruel or unusual is not the test of the jury rule. The test is whether *any punishment at all* should be imposed. I can imagine a juror "who meets the technical requirements, having only the intelligence of a moron," but in a quarter of a century of practice in many courts before many judges I never heard of a case in which such a juror served.

I do not agree with the Judge's statements regarding the feelings of the jurors themselves. A "busy citizen" should not resent being called to act as a juror. That is his duty and privilege. I never heard of a case wherein the majority was *clearly* convinced and yet the jury was hung. Theoretically this is possible but it just doesn't happen. When a majority is clearly convinced, the jury returns a verdict. I do not believe that a juror should feel his duties "wearisome" or "tiresome." All governmental duties and responsibilities require energy and effort, but certainly those of a juror are no more wearisome or tiresome than those of the judge, the prosecutor, the defending attorney, the bailiff, the clerk, or any other officer of the court.

When a jury disagrees, which is infrequent, I do not feel that the judge is "forced" to declare a mistrial. It is his duty, and a duty that is a substantial part of the legal system which protects the rights of all the people, including the defendant. I differ vigorously that taxpayers' money is thus wasted. The protection of the rights of our citizens is a fundamental duty of the government. It is proper that the cost of this should come out of the public treasury, and the saving of a small sum of money should never under any circumstances be considered as a factor or fact in determining whether or not a defendant is guilty or whether or not his constitutional rights are being preserved for him in that particular case, and all the remainder of our people in the cases of the future. I do not believe you can reduce the protection of civil liberty to a measure of money.

I disagree that the "will of the legislative majority" is at stake. What is at stake is the will of our constitutional fathers. The issue is whether we shall protect adequately the liberties and rights of all the people in our republic, or whether we shall for any reason curtail the expression of the most fundamental purpose for which our republic was founded.

I do agree that too many criminal cases are compromised, but I disagree vehemently that this is brought about by the fear of the prosecutor that he will be unable to get an intelligent jury which will return a unanimous verdict. I have seen this compromise situation day in and day out during all of my practice, and invariably it arises from the practice of a prosecutor securing an indictment or information charging the defendant with a more serious offense than he hoped to secure a conviction on, and then compromising with the defendant for a plea of guilty to an offense no greater or less than the indictment should have charged in the first instance. I think this is a lazy prosecutor's behavior and I do not condone it. Nevertheless, the practice is not at all uncommon.

I do not take the position that this reasoning applies to civil trials. It is the enforcement of criminal law that merits our consideration. Judges, prosecutors and court attaches represent all of the people, including the defendant. It should not be a guide in criminal trials that someone should be punished for every offense. The guide is whether the defendant then and there on trial has been convicted beyond all reasonable doubt and whether his constitutional rights and liberties have been at all times granted and observed, in order that the very elements of our form of government may endure.

No official should seek or accept the plaudits of the multitude for a fanciful position in convicting defendants. We may not safely depart from the inexorable requirement that every person, whether innocent or guilty, is entitled to the benefits of a trial by the same rules, the same safeguards, and the same legal reasons. It matters not that a guilty person now and then may go free; the question is whether or not an innocent person has been convicted, and whether our republican form of government guaranteeing life, liberty and the pursuit of happiness can survive.

SCERIAL THOMPSON.

Harrisburg, Ill.

Editor's Note: Not having submitted this letter to Judge Haralson before printing it, we will venture the guess that he would readily agree with Mr. Thompson's insistence on protecting constitutional rights and civil liberties. But has Mr. Thompson established his own point that they are better protected with unanimous verdicts? Such does not appear to be the sentiment in the five states where less than unanimous verdicts are accepted in criminal cases. A Texas reader suggested that we print an address of a generation ago in which the speaker inveighed with great eloquence against majority verdicts in civil cases also, grudgingly conceding that some half dozen obscure states had been using them a short time, but pointing out with pride that after extended consideration New York had declined to do so. And yet that small minority has grown with the years to where it is now the majority, and for ten years New York has been among its leaders! Our guess is that it will take more eloquence and inductive reasoning than we have yet heard to keep other states from swinging into line behind Oregon, Idaho, Oklahoma, Montana and Louisiana, as their experience continues to demonstrate to the world year after year that without unanimous verdicts criminal defendants can and do get fair trials and taxpayers can and do save money.

The Literature of Judicial Administration

ARTICLES

Oh where, oh where
Has the Municipal Court gone?
We must find it to earn our fee.
With a judge perched here
And a judge perched there,
We cain't figger out whar she be.

These plaintive lines open Presiding Judge Ray Brockman's article "The Hobgoblin of Scattered Courts" in the January Los Angeles Bar Bulletin. In the same issue Judge Samuel R. Blake writes of the similar housing problem of the Superior Court, and the editor reprints a 1933 editorial on the need for a new court house under the title "New County Court House 'No Progress' Report." Each of the two courts is said to be the largest of its kind in the country, yet in spite of dockets steadily falling behind, more judges cannot be added nor temporary relief judges brought in from other districts for lack of court rooms. Both courts meet in all kinds of rooms in all stages of repair in a dozen different buildings around the city.

If a metropolis as proud and progressive as Los Angeles takes no better care of its courts than these articles indicate, how do the courts fare in less prosperous communities? Unfortunately, the administration of justice is not a money-making proposition. An investment in suitable accommodations for the courts will surely be repaid in increased respect for the law and justice dispensed there.

The 1946 opinion of the Supreme Court of Wisconsin (In re Integration of the Bar, 249 Wis. 523, 25 N. W. 2d. 500) declining to organize and set in operation the integrated state bar created by act of the legislature in 1943, is the subject of a searching analysis and criticism by Professor Maynard E. Pirsig in his article "Integration of the Bar and Judicial Responsibility" in the December, 1947, Minnesota Law Review. The title is taken from the court's thesis that the proposed relationship between bar and court would subject the former to unwarranted restraints and the latter to unwarranted responsibilities. Professor Pirsig has taken the court's wholly *a priori* argument, point by point, and checked it against the experience of the numerous states operating under a system such as the Wisconsin court declines to set up, and has demonstrated convincingly that it is without merit. He then reviews the legislative and judicial history behind the decision and concludes that while integration in Wisconsin is probably dead until the personnel of the court has changed, "the foregoing account should sufficiently demonstrate that the spectacle in Wisconsin is hardly an example to be followed in any other state."

The address of Chief Justice James M. Douglas of the Supreme Court of Missouri before the 1947 annual meeting of the Alabama State Bar is published in the December American Bar Association Journal under the title: "Judicial Selection and Tenure: 'Missouri Plan' Works Well in Actual Results." Judge Douglas traces the background and history of the plan, summarizes its provisions, and discuscusses in detail the manner in which the plan's seven years of operation have justified the hopes of its sponsors.

The presidential address of Walter G. Winne at the 1947 annual meeting of the New Jersey State Bar Association, entitled "Integration of the Bar," and published in the Association's 1947 yearbook, is an excellent summary of arguments for integration and quotations from authorities throughout the country, and was responsible for the current renewal of interest in that subject in that state.

Other noteworthy articles in current periodicals:

"A Suggested Program for the Kansas City Bar Association," by Terrence M. O'Brien, in the December Kansas City Bar Bulletin, is worthy of study by the officers of all metropolitan bar associations.

"Legal Clinics and the Bar," by Charles H. Miller, in the December Tennessee Law Review, discussing the work of the legal aid clinic at the University of Tennessee.

"The Press and the Bar," by William Vaughan of the Kansas City Star, Journal of the Missouri Bar, December, 1947.

"The Lawyer, Public Citizen Number One," by Robert Elliott Freer, Journal of the Bar Association of the District of Columbia, December, 1947.

"The Courts in a Democracy," by Harold C. Havighurst, Illinois Law Review, November-December, 1947.

"The Cold Neutrality of an Impartial Judge," by Bernard L. Shientag, New York State Bar Association Bulletin, December, 1947.

"Mr. Casey" on "Th' Joodiciary as Human 'Beans'," Bench and Bar of Minnesota, December, 1947.

"Cross-Examination—A Judge's Viewpoint," by Bernard L. Shientag, The Record of the Association of the Bar of the City of New York, January, 1948.

"The Law Belongs to You," by William T. Gossett. Address before college alumni group, published in booklet form by Ford Motor Co., Detroit.

CASES

Tyson v. Tyson, Court of Common Pleas, County of Richland, State of South Carolina, M. M. Mann, J., decided October 8, 1947.

This case involved an attack upon the constitutionality of a county domestic relations court, the legislative act for which provides that its judge shall be appointed upon the recommendation of the county bar association. The circuit court sustained the act against the contention that this was an unconstitutional delegation of governmental power to a private organization, citing *Ashmore v. Greater Greenville Sewer District,* 44 S.E. 2d. 88 (1947), which held that such a power may not be exercised by a non-governmental body having no rational and substantial relation to the law to be administered by the appointee or the institution to be governed. A dictum in the *Ashmore* case referred specifically and approvingly to the appointment of judges under this statute, and Judge Mann cited that dictum and added:

"In my opinion, much stronger comment can be made with respect to the nomination of a judge of a court by the lawyers of the county of the court's jurisdiction. Because of the professional status of lawyers, their direct interest in the administration of the court and their deep awareness of the importance of the court's work, it seems to me that the legislature was well advised to require the recommendation of the local bar association as a condition precedent to the appointment of the judges. Unquestionably, lawyers who will practice in a court are particularly qualified to appraise the suitability of the person to act as judge of that court. They know the high requirements of character, legal learning, judicial temperament and industry which a judgeship involves, and they know better than any other group in the county which attorney at their bar best fulfills these requirements.

"Furthermore, it seems to me that attorneys commissioned by the state as qualified to practice in the courts of the state occupy a position apart from that of mere private citizens in respect to the functioning of the courts and the proper administration of justice by the courts. Traditionally, attorneys are officers of the court, subject to the control of the court in their professional conduct and owing the highest of duties to the court. It seems logical then for the legislature to give to these officers of the court, who are a part of the judicial machinery, a part in the naming of the pudges."

Although this decision was not appealed to the state supreme court, that court had previously denied to the same party a writ of prohibition against the domestic relations judge's exercise of jurisdiction in the case, and there is little doubt that Judge Mann's wholesome and well-reasoned view of bar responsibility and power in the selection of judges is well established in South Carolina law. The court organization plan under consideration by the Bar Association of Arkansas, as revised in the commission's 1947 report, provides for appointment of judges upon the nomination of the members of the bar of the district involved, and the Idaho bar has been exploring the possibilities of bar participation in the selection process. Here is one precedent in their support.

New Members of the American Judicature Society

California
Alameda
RANDAL D. DICKEY
Beverly Hills
LOWELL MATTHAY
Coalinga
KARL F. KENNEDY
Healdsburg
CASPER A. ORNBAUN
Los Angeles
LEO E. ANDERSON
WILLIAM M. BYRNE
RICHARD H. CANTILLON
ZACH LAMAR COBB
WILBUR C. CURTIS
REX HARDY
JACOB J. LIEBERMAN
J. F. T. O'CONNOR
JULIUS V. PATROSSO
CLARENCE B. RUNKLE
JAMES C. SHEPPARD
ALBERT LEE STEPHENS, JR.
J. MARION WRIGHT
Oakland
LAWRENCE S. FLETCHER
PAUL D. MORSE
Riverside
OAKLEY KENDALL MORTON
San Diego
FRED KUNZEL
San Francisco
WINSTON CHURCHILL BLACK
ALLEN L. CHICKERING
MORSE ERSKINE, II
BRADFORD M. MELVIN
GEORGE M. NAUS
MILTON D. SAPIRO
San Jose
DUNCAN ONEAL
Santa Barbara
ALFRED D. HAINES

District of Columbia
Washington
JOHN C. WILLIAMSON

Indiana
Goshen
GUY W. DAUSMAN

Iowa
Des Moines
ROBERT W. SWENSON

Kansas
Wichita
HARRY GILLIG, JR.

Michigan
Monroe
GEORGE S. WRIGHT

Missouri
Kansas City
FRANK BROCKUS
ROGER S. MILLER

Texas
Beaumont
R. E. CLOUD
Lamesa
CARL ROUNTREE
Stamford
CHARLES E. COOMBES